

Complaint

78 F.T.C.

IN THE MATTER OF

CITY STORES COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1922. Complaint, May 18, 1971—Decision, May 18, 1971

Consent order requiring a New York City chainstore corporation to cease using collection documents which simulate official documents and falsely representing that an independent attorney will imminently file suit against the alleged debtor.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that City Stores Company, a corporation, hereinafter referred to as respondent, through its Franklin Simon division, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. City Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 500 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in operating a diversified group of approximately 133 retail stores, including the collection of delinquent accounts. Franklin Simon, a division of respondent, operates approximately 60 apparel specialty stores in 15 States and Washington, D.C.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and for some time last past has been, engaged in the transmission and receipt of goods, monies, checks, collection forms and letters and other written instruments among and between the various States of the United States and the District of Columbia and maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and for the purpose of collecting delinquent accounts, respondent's Franklin Simon division mails or causes to be mailed to alleged debtors various form letters, demands for payment, and other printed material.

Typical and illustrative of Franklin Simon's forms, but not all inclusive thereof, is the following:¹

Said "Final Notice and Demand" document is mailed in a gray manila envelope carrying a return address, G.P.O. Box 8740, Philadelphia, Pennsylvania.

By and through the use of the aforesaid form and envelope, including the statements and representations thereon, respondent's Franklin Simon division represented, and now represents, directly or by implication that said "Final Notice and Demand" documents and envelope in form and content are official documents.

In truth and in fact, said "Final Notice and Demand" form and envelope are not official documents, but on the contrary are wholly private in origin.

Therefore, the statements and representations set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 5. In the course and conduct of its business, respondent's Franklin Simon division often causes to be mailed to alleged debtors a letter from an independent attorney, Irwin J. Harrison, Esquire. Said letter reads in part as follows:

"As a result of your failure to make payment of the above amount, your account has been referred to me by Franklin Simon.

Unless payment is promptly made to Franklin Simon, it will be necessary to commence legal action and to obtain a judgment in the amount due with court costs and with the attendant expenses and time loss.

Such legal action can only be avoided by your immediate payment of the balance due on your account."

By and through the use of the aforesaid letter including the statements and representations contained therein, respondent's Franklin Simon division caused to be represented and now causes to be represented, directly or by implication, that the account has been placed with an independent attorney, Irwin J. Harrison, Esquire, for collection and that he has been instructed by Franklin Simon to file suit against the alleged debtor unless the alleged debt is immediately paid in full.

In truth and in fact, said attorney's services are limited to forwarding letters to alleged debtors, receiving telephone replies and the processing of alleged debtors answering letters, including the forwarding of monies received by him to Franklin Simon and said attorney does not institute collection suits for Franklin Simon. In the event that said attorney's letter is unsuccessful in collecting the

¹ Two pictorial forms were omitted in printing.

Decision and Order

78 F.T.C.

alleged debt, Franklin Simon refers the account to an independent collection agency which in turn repeats a series of individual dunning letters before any legal action is contemplated.

Therefore, the statements and representations set forth in Paragraph Five hereof were, and are, false, misleading and deceptive.

PAR. 6. In the course of its aforesaid business, and at all times mentioned herein, respondent's Franklin Simon division has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the business of the same general kind and nature of the business of Franklin Simon.

PAR. 7. The use by respondent's Franklin Simon division of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and to make payments on accounts by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent's Franklin Simon division as herein alleged, were and are all to the prejudice and injury of the public and of Franklin Simon's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its

1084

Decision and Order

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent City Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Fifth Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondent City Stores Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate device, in connection with the collection of delinquent accounts by its Franklin Simon division, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any document, form or envelope which simulates an official document, form or envelope authorized, issued or approved by any governmental authority.

2. Falsely representing or causing to be falsely represented that respondent corporation intends to imminently file suit against the debtor unless the alleged debt is immediately paid in full.

3. Falsely representing or causing to be falsely represented that respondent has instructed an independent attorney to file suit against an alleged debtor unless the alleged debt is immediately paid in full.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

78 F.T.C.

IN THE MATTER OF

OSAGE HANDKERCHIEF CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1923. Complaint, May 18, 1971—Decision, May 18, 1971

Consent order requiring a New York City importer and distributor of textile fiber products, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform with the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Osage Handkerchief Co., Inc., a corporation, and Edward Debowsky, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Osage Handkerchief Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 40 West 37th Street, New York, New York.

Respondent Edward Debowsky is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation, sale and distribution of textile fiber products, including, but not limited to, ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce," and "product" are defined in the Flammable Fabrics Act, as amended, which fail to conform: